



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,640	03/16/2004	James F. Conway	ACIP 8890US	4917
1688 7590 04/02/2008 POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			EXAMINER LE, TAN	
			ART UNIT 3632	PAPER NUMBER
			MAIL DATE 04/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/802,640	Applicant(s) CONWAY, JAMES F.	
	Examiner Tan Le	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5,7,8 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-3, 5, 7-8 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the third office action corresponding to an RCE filed 3/07/08. Claims 2-3, 5, 7-8, 9-15 and 16-21 are pending. Claims 1, 4 and 6 was previously canceled. Claims 9-15 was previously withdrawn.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/07/08 has been entered.

Claim Objections

Claim 16 is objected to because "the display" (see line 6) " is drawn into the claim while the display does not appear to be of the claimed invention (see the preamble). Claims 16-20 are considered drawn to the combination of display and the clip for examination purposes.

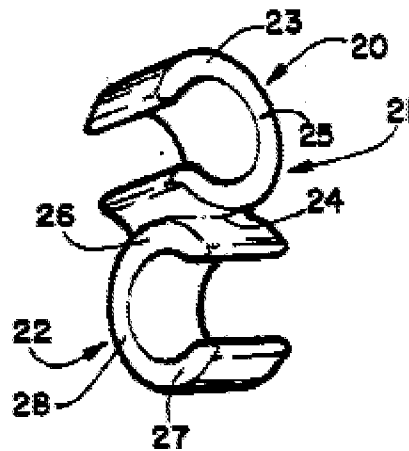
Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16-21, 2-3, 5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,371,991 to Bechtel et al.

As to claims 16, 20, 21 and 5, Bechtel et al teaches a re-bar clamp assembly (Fig. 2) comprising all the limitations as claimed, which clearly shows on the attached Figure 2, comprising a pair of first arms 21 and a pair of second arms (22), each pair of arms defining an elongated open mouth channel wherein the open mouth channel receives at least a portion of the display (receives steel bar 13) (Fig. 1).

As to claim 7, the material of the clip, Bechtel et al also discussed on col. 2, line 68 and col. 3, lines 1-4) as being made out of plastic.



As to claims 2-3 and 17-19, Bechtel et al. device also shows a flared outwardly at the ends of each of pair of arms (see Fig. 2 for clarity).

Bechtel teaches all the features as claimed except for the first pair of opposing arms spaced apart from each other a first distance and the second pair of opposing arms spaced apart from each other a second distance wherein the first distance is greater than the second distance. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the first distance dimension size is greater than the second distance dimension size because Applicant has not disclosed that having the first distance dimension size greater than the second distance provides an advantage or solves any stated problem or is for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the teaching of any distance dimension of the reference because they both perform the same function. Therefore, it would have been obvious matter of design choice to modify the reference of Bechtel to obtain the invention as specified in the claims. Further, it would have been an obvious matter of design choice to make the first distance dimension being greater than the second distance dimension, since such a modification would have involved a mere change in the size/dimension of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In *Re Rose*, 105 USPQ 237 (CCPA 1955).

Response to Arguments

Applicant's arguments filed 3/07/08 with respect to claims 16 and 21 have been considered but are moot in view of the new ground(s) of rejection.

Accordingly, this action is made NON-FINAL

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy J. Sterling/
Primary Examiner, Art Unit 3632
3/27/08

Application/Control Number: 10/802,640
Art Unit: 3632

Page 6

/T. L./
Examiner, Art Unit 3632